IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 15TH MAY 2007 / 25TH VAISAKHA 1929

WP(C).No. 14746 of 2007(E)

PETITIONER:
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1. R.SUNIL, VAKKATH VADAKKATHIL,
   3 PADANAYARKULANGARA C, KARUNAGAPPALLY.

2. KAHAR, ZAKKIR MANZIL,
   KAPPIL P.O., KAPPIL.

BY ADV. SRI.S.SOMAN
SMT.P.RAJATHA

RESPONDENTS:
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1. INTELLIGENCE OFFICER,
   COMMERCIAL TAXES, SQUAD NO.1, KOLLAM.

2. INSPECTING ASST. COMMISSIONER
   (INTELLIGENCE) OFFICE OF THE IAC, KOLLAM.

BY GOVERNMENT PLEADER SRI. GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Antony Dominic, J.

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W.P.(C)No.14746 of 2007

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Dated this the 15th day of May, 2007.

JUDGMENT

Writ petitioners claim to be the owners of 15 bundles of ready made garments, which are stated to be meant for distribution to street vendors. It is stated that on an inspection by the first respondent, the same was detained and Ext.P1 is the notice issued to the owner of the vehicle in which the goods were being transported. It is complained that although the petitioners requested for release of the goods on payment of double the amount of tax as provided under Section 47(2) of the Kerala Value Added Tax Act (hereinafter referred to as 'the Act'), that request has not been conceded while at the same time by Ext.P3 order, levying a penalty of Rs.20,000/-, the vehicle which was also detained has been released. In the aforesaid circumstances, asserting their right to have the goods released to them on payment of double the amount of tax, this Writ Petition has been filed seeking consequential directions.

2. On behalf of the respondents, a counter affidavit has been filed. It is stated that on the basis of information that large quantities

of textile goods including ready made garments are being transported from Tamil Nadu to Kerala evading tax that is payable and as they had particular information regarding the consignment in question, an informer was appointed at the Paravur Railway Station. It is stated that on 22.4.2007, 15 bundles of ready made goods were unloaded from a passenger train and loaded into a tempo van and that while attempting to transport the said goods, the Intelligence Squad of the Department intercepted the vehicle and demanded the driver to produce documents evidencing title to the goods. It is stated that the statements of the driver and Kahar, the second petitioner, who was present in the vehicle were recorded and Exts.R1 and R2 are those statements. According to the respondents, the goods were consigned to one Sunil, Paravur and that complete address of the consignee was not mentioned in the forwarding note or the railway receipt. It is also stated that in view of the contradiction in the statement of Kahar asserting his title to the goods and the railway documents indicating that the consignee was one Sunil, a public notice was issued on 22.4.2007 requiring the real owner to appear before the Intelligence Officer. The notice did not invoke any response and while so, the first petitioner laid a claim contending that he along with the second petitioner owned the goods. It is also stated in the affidavit that the

enquiries conducted revealed that the goods were really intended to be delivered to a newly opened shop at Parippally and that attempt was to evade tax and it was therefore that the same was transported under a bogus name. In this factual background, the Department contended that the course of action that is open to them is under Section 47(16) of the Act for seizure and sale of the same in public auction.

3. Heard counsel for the petitioners and the Government Pleader.

4. Counsel for the petitioner would submit that the petitioners are the real owners of the goods and that the documents produced along with I.A.No.6343 of 2007, would indicate that Sunil mentioned in Ext.P7 railway receipt is none other than the first petitioner, whose voter identity card is Ext.P6. Counsel also makes reference to Ext.P8 affidavit sworn to by the first petitioner affirming that he is the person mentioned in the railway receipt. It is also stated that the truck which was alleged to have been loaded for transporting the goods has already been released to the registered owner and therefore there is no reason why the goods shall not be released. Counsel makes offer to remit the double amount of tax payable under Section 47(2) of the Act. On this basis, counsel pleads that the goods shall be released at the earliest. On the other hand, Government Pleader referring to the

contentions as contained in the counter affidavit would plead that at this stage this Court will not be justified in preventing the Department from continuing the action under Section 47(16) of the Act.

5. I have considered the rival contentions of the respective counsel. It is seen that the railway receipt did not contain complete address of the consignee. There is also contradiction between the statement given by the second petitioner and the subsequent claim raised by the first petitioner regarding ownership of the goods. If in fact, the first petitioner had ownership over the goods in question along with the second petitioner, the second petitioner would have certainly disclosed the same in his statement. It is in the above circumstances that the Department issued notice calling upon the real owner of the goods which also not been evoked any response. In the circumstances, the Department cannot be faulted for initiating proceedings under Section 47 (16) of the Act. If that be so, it will not be proper for this Court to interfere with the proceedings at this stage and direct release of the goods.

6. Counsel for the petitioner points out that the vehicle used for transporting the goods having been released, there is no justification for refusing to release of the goods. The counter affidavit explains that the proceedings were initiated against the owner and that it is only on

remittance of the penalty amount and the truck was released to the owner. Therefore, the fact that the truck has been released to the owner does not entitle the petitioners to claim that the goods shall be released to them. In any case, having regard to the fact that the proceedings are proposed to be initiated on the basis that the goods were transported or attempted to be transported in the name of bogus or unidentifiable person, it will not be proper to direct release of the goods. The contentions raised by the petitioner are those, which are required to be considered by the officer concerned at the time when final orders are passed.

7. In the circumstances, I am not inclined to grant the reliefs sought for. However, I clarify that whatever I have expressed in this judgment are only prima facie views and shall not influence the officer while adjudicating the matter and that orders shall be passed untrammelled by the observations contained in this judgment.

Writ Petition is dismissed.

Antony Dominic
Judge.

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